

Pro Se 1 (Rev. 09/16) Complaint for a Civil Case

## UNITED STATES DISTRICT COURT

for the

District of Massachusetts

Kenneth Pitts

Case No. \_\_\_\_\_

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Massage Envy Brookline (Andy Kwan / Loren Benn)

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Jury Trial: (check one) ☒ Yes ☐ No

FILED  
IN CLERKS OFFICE  
2022 FEB 14 AM 10:49  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

## COMPLAINT FOR A CIVIL CASE

## I. The Parties to This Complaint

## A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Kenneth Pitts
Street Address	131 Washington St. #35
City and County	Brighton (Suffolk County)
State and Zip Code	Massachusetts 02135
Telephone Number	(617) 940-9232
E-mail Address	pittsk80@gmail.com

## B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

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## Defendant No. 1

Name	Andy Kwan
Job or Title <i>(if known)</i>	Owner - Massage Envy Brookline
Street Address	481 Harvard St.
City and County	Brookline ( Norfolk County)
State and Zip Code	Massachusetts 02446
Telephone Number	(614) 940-9232
E-mail Address <i>(if known)</i>	andy.kwan@massageenvy.com

## Defendant No. 2

Name	Loren Benn
Job or Title <i>(if known)</i>	Manager - Massage Envy Brookline
Street Address	481 Harvard St.
City and County	Brookline (Norfolk County)
State and Zip Code	Massachusetts 02446
Telephone Number	(626) 826-1113
E-mail Address <i>(if known)</i>	clinic0861@massageenvy.com

## Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

## Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

**II. Basis for Jurisdiction**

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal court jurisdiction? (check all that apply)

☒ Federal question ☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

**A. If the Basis for Jurisdiction Is a Federal Question**

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

- Title 7 of the Civil Rights Act of 1964, as amended, and jurisdiction is based on 28 U.S.C. 2000e-2 (Section 703) 1331
- Equal Rights under law (42 U.S.C. 1981), and jurisdiction is based on 28 U.S.C. 1331

**B. If the Basis for Jurisdiction Is Diversity of Citizenship****1. The Plaintiff(s)****a. If the plaintiff is an individual**

The plaintiff, (name) \_\_\_\_\_, is a citizen of the State of (name) \_\_\_\_\_.

**b. If the plaintiff is a corporation**

The plaintiff, (name) \_\_\_\_\_, is incorporated under the laws of the State of (name) \_\_\_\_\_, and has its principal place of business in the State of (name) \_\_\_\_\_.

*(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)*

**2. The Defendant(s)****a. If the defendant is an individual**

The defendant, (name) \_\_\_\_\_, is a citizen of the State of (name) \_\_\_\_\_. Or is a citizen of (foreign nation) \_\_\_\_\_.

## b. If the defendant is a corporation

The defendant, (name) \_\_\_\_\_, is incorporated under the laws of the State of (name) \_\_\_\_\_, and has its principal place of business in the State of (name) \_\_\_\_\_.

Or is incorporated under the laws of (foreign nation) \_\_\_\_\_, and has its principal place of business in (name) \_\_\_\_\_.

*(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)*

## 3. The Amount in Controversy

The amount in controversy-the amount the plaintiff claims the defendant owes or the amount at stake-is more than \$75,000, not counting interest and costs of court, because *(explain)*:

**III. Statement of Claim**

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

I am a male who has experienced "sex (gender) discrimination" and retaliation from my former employer, Massage Envy of Brookline (Andy Kwan / Loren Benn). Due to the actions of Andy Kwan and Loren Benn of Massage Envy of Brookline, I have lost wages and suffered financial hardship as a result of their retaliation. The employer honored the "employment pause" request of my female coworker, but refused my identical request during the COVID-19 pandemic in 2020-2021. I am requesting a jury trial, if such service is available. You will find attached further evidence of the discriminatory acts committed by my former employer. The additional documents include text message communications between coworker, Melissa Palermo and I, as well as transcript copies

**IV. Relief**

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I, Kenneth Pitts, respectfully request the U.S. Disitrcit Court for the District of Massachusetts to order the defendant, Massage Envy of Brookline (Andy Kwan / Loren Benn) to pay actual and punitive damages totaling the amount of \$100,000.00, as well as court costs. The amount requested includes lost wages after taxes and pain & suffering on a scale of 1, due to the financial hardship and damage the defendants' actions have caused.

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Weekly = \$24 x 25 hrs = \$600 wk x 4	= \$2,400 mo
Saturday = \$24 x 6 hrs = \$144 x 1	= \$144
Tips = \$20 hr avg x 25 hrs = \$500 wk x 4	= \$2,000 mo
Teaching \$150 x 2	= \$300 mo
Therapeutic Therapists Sessions = \$75 x 2	= \$150 mo
Tuition Stipend	= \$200 mo
Total	= \$1,298.50 weekly x 52 = \$67,522.00 (gross)

**V. Certification and Closing**

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

**A. For Parties Without an Attorney**

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: \_\_\_\_\_

Signature of Plaintiff

*Kenneth Pitts*

Printed Name of Plaintiff

Kenneth Pitts

**B. For Attorneys**

Date of signing: \_\_\_\_\_

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address

### III. STATEMENT OF CLAIM

I am a male who has experienced "sex (gender) discrimination" and retaliation from my former employer, Massage Envy of Brookline (Andy Kwan / Loren Benn). Due to the actions of Andy Kwan and Loren Benn of Massage Envy of Brookline, I have lost wages and suffered financial hardship as a result of their retaliation. The employer honored the "employment pause" request of my female coworker, but refused my identical request during the COVID-19 pandemic in 2020-2021. I am requesting a jury trial, if such service is available. You will find attached further evidence of the discriminatory acts committed by my former employer. The additional documents include text message communications between coworker, Melissa Palermo and I, as well as transcript copies from hearings hosted by The Department of Unemployment Assistance. I hereby request that Melissa Palermo be subpoenaed as a witness.

1. Palermo was permitted to "pause" employment on or about March 1, 2020 due to "high risk" for COVID family member(s).

(DOC006 pg. 5 (125))

2. Ms. Palermo and I both submitted a "Return from Furlough" document on or about June 12, 2020.

(ME Return Letter (06122020))

3. Ms. Palermo and I were both added to the DUA Workshare Program and then removed from the DUA Workshare Program on or about July 28, 2020 after expressing to the employer our "blanket reuse" and lack of employer PPE safety concerns during COVID pandemic.

(DOC006 pg. 2-3 (94 - 95), Andy Workshare Email (07272020) & Palermo Text Messages pgs, 1-9)

4. The employer filed "suitable work", "quit / discharge" claims causing DUA benefits stoppage for Pitts, while allowing Palermo to continue receiving unemployment benefits unchallenged. The employer threatened to cause benefits stoppage when Pitts reported employer intent to violate CDC and MA state COVID reopening guidelines.

(Palermo Text Messages pg. 14)

5. The employer falsely claims MP to have been on "leave of absence" and approved her DUA benefits due to supposed hand surgery during the March 12, 2020 to on or about July, 10, 2020 shutdown. Palermo admits in texts that her surgery occurred on or about the first week of January 2021, and that she had made Loren Benn aware of this, as Palermo had to acquire an insurance "letter" paperwork from Benn that first week of January 2021. Doing so allows MP to be approved for additional unemployment benefits and Massage Envy Brookline (Andy Kwan / Loren Benn) to avoid a potential discrimination lawsuit.

(DOC006 pgs. 1, 4 - 6 (77, 124-125, 129), ME Palermo Surgery Jan. 12, 2021, Screenshot\_20211015-151433\_Messages)

6. The employer stated that I, the plaintiff, was also on a "leave of absence" since 2020. just like that of Palermo. But unlike that of Palermo, my unemployment benefits were refuted by the employer after the July 2020 reopening, leading to short stoppages in July and August, and a complete stoppage of my unemployment benefits as of September 2020.

(DOC006 pg. 6 (129))